

(11)
No. 93-714

Supreme Court, U.S.

FILED

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**IN THE
Supreme Court of the United States**

October Term, 1993

U.S. BANCORP MORTGAGE COMPANY,

Petitioner,

v.

BONNER MALL PARTNERSHIP,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONSE OF PETITIONER TO
MEMORANDUM OF RESPONDENT
SUGGESTING THAT THE CASE IS MOOT

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U.S. Bancorp Mortgage Company ("U.S. Bancorp"), petitioner in the above-captioned case, responds to the Memorandum of Respondent Suggesting that the Case is Moot, filed on March 14, 1994 (the "Memorandum").

The question presented in this case is as follows:

Whether the new value exception to the absolute priority rule survived enactment of the Bankruptcy Reform Act of 1978, permitting the debtor in the Chapter 11 bankruptcy case to confirm a nonconsensual plan of reorganization that allows the debtor's equity holders to retain ownership of the reorganized debtor while paying objecting creditors less than the full amount of their claims.

The facts set forth in the Memorandum are accurately stated. U.S. Bancorp therefore agrees that the case is moot and that it should be dismissed.

In the event that the Court finds that the facts described render the case moot, U.S. Bancorp respectfully requests that the Court vacate the decree below. See United States v. Munsingerwear Corp., 340 U.S. 36, 39-41 (1950). Such relief would be appropriate to "eliminate [] a judgment, review of which was prevented through happenstance." Id. U.S.

Bancorp does not believe that dismissal pursuant to Rule 46 of the Rules of the Supreme Court is appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Bradford Anderson', written over a horizontal line.

BRADFORD ANDERSON
Attorneys for Petitioner
U.S. Bancorp Mortgage
Company

MARCH 15 1994